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Agenda item 81
Report of the International Law Commission on the work of its sixty-third session

Draft resolution

Report of the International Law Commission on the work of its sixty-third session

The General Assembly,

Having considered the report of the International Law Commission on the work of its sixty-third session,[1]

Emphasizing the importance of furthering the progressive development and codification of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development and codification of international law,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Recalling the role of Member States in submitting proposals for new topics for the consideration of the International Law Commission, and noting in this regard the recommendation of the Commission that such proposals be accompanied by a statement of reasons,

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[1] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).

[2] Resolution 2625 (XXV), annex.

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Reaffirming the importance for the successful work of the International Law Commission of the information provided by Member States concerning their views and practice,

Recognizing the importance of the work of the special rapporteurs of the International Law Commission,

Welcoming the holding of the International Law Seminar, and noting with appreciation the voluntary contributions made to the United Nations Trust Fund for the International Law Seminar,

Acknowledging the importance of facilitating the timely publication of the *Yearbook of the International Law Commission* and of eliminating the backlog,

Stressing the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

Welcoming initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the General Assembly,

1. *Takes note* of the report of the International Law Commission on the work of its sixty-third session;[1]

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its sixty-third session;

3. *Recommends* that the International Law Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee;

4. *Commends* the International Law Commission for the completion of its work on the draft articles on the responsibility of international organizations, the draft articles on the effects of armed conflicts on treaties, and the Guide to Practice on Reservations to Treaties;

5. *Decides* that the consideration of chapter IV of the report of the International Law Commission on the work of its sixty-third session,[3] dealing with the topic "Reservations to treaties", shall be continued at the sixty-seventh session of the General Assembly, during the consideration of the report of the Commission on the work of its sixty-fourth session;

6. *Draws the attention* of Governments to the importance for the International Law Commission of having their views on the various aspects of the

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[3] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 51-76, and A/66/10/Add.1.

topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report, regarding:

(a) Immunity of State officials from foreign criminal jurisdiction;

(b) Expulsion of aliens;

(c) Protection of persons in the event of disasters;

(d) The obligation to extradite or prosecute (*aut dedere aut judicare*);

(e) Treaties over time;

(f) The most-favoured-nation clause;

7. *Takes note* of paragraphs 365 to 369 of the report of the International Law Commission and, in particular, of the inclusion of the topics "Formation and evidence of customary international law", "Protection of the atmosphere", "Provisional application of treaties", "The fair and equitable treatment standard in international investment law" and "Protection of the environment in relation to armed conflicts" in the long-term programme of work of the Commission,[4] and also takes note of the respective comments made by Member States;

8. *Invites* the International Law Commission to continue to give priority to, and work towards the conclusion of, the topics "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)";

9. *Takes note* of the oral report by the Secretariat on assistance to special rapporteurs of the International Law Commission[5] and of paragraph 400 of the report of the Commission, and requests the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002;

10. *Takes note* of paragraphs 370 to 388 of the report of the International Law Commission and in this regard welcomes the work of the Commission during its sixty-third session to improve its methods of work relating to the role of the special rapporteurs, the study groups, the Drafting Committee, the Planning Group, the preparation of commentaries to draft articles, the final form of the work undertaken on a specific topic, the Commission's report and the relationship with the Sixth Committee;

11. *Welcomes* in this regard, in particular, the decision of the International Law Commission to define a tentative schedule for the development of any new topic, to periodically review the attainment of annual targets, and to discuss a preliminary plan for the next annual session at the end of each session, and invites the Commission to make such information available to Member States;

12. *Decides* to revert to the consideration of the recommendation contained in paragraph 388 of the report of the International Law Commission during the sixty-seventh session of the General Assembly;

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[4] See *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 365.

[5] See A/C.6/66/SR.26. See also A/64/283 and A/65/186.

13. *Invites* the International Law Commission to continue taking measures to enhance its efficiency and productivity and to consider making proposals to Member States to that end;

14. *Encourages* the International Law Commission to continue taking cost-saving measures at its future sessions, without prejudice to the efficiency and effectiveness of its work;

15. *Takes note* of paragraphs 389 to 391 and 413 to 415 of the report of the International Law Commission and, while acknowledging the exceptional character of its short duration, decides that the next session of the Commission shall be held at the United Nations Office at Geneva from 7 May to 1 June and from 2 July to 3 August 2012, and requests the Secretariat to present options on how to secure earlier dates for the sessions of the Commission to ensure optimal working conditions for the Commission and the timely publication of its report to the General Assembly;

16. *Stresses* the desirability of further enhancing the dialogue between the International Law Commission and the Sixth Committee at the sixty-seventh session of the General Assembly, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixty-seventh session of the Assembly;

17. *Encourages* delegations, during the debate on the report of the International Law Commission, to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;

18. *Encourages* Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;

19. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

20. *Takes note* of paragraphs 418 to 422 of the report of the International Law Commission with regard to cooperation and interaction with other bodies, and encourages the Commission to continue the implementation of article 16, paragraph (*e*), article 25 and article 26 of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

21. *Notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

22. *Reaffirms* its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing

assistance to the International Law Commission, including in the preparation of memorandums and studies on topics on the agenda of the Commission;

23. *Approves* the conclusions reached by the International Law Commission in paragraph 402 of its report, and reaffirms its previous decisions concerning the documentation and summary records of the Commission;[6]

24. *Welcomes* the efforts of the Secretariat to include on a trial basis the provisional summary records on the website relating to the work of the International Law Commission and encourages their immediate inclusion, as soon as the electronic versions are received by the secretariat of the Commission, and looks forward to the institutionalization of this practice;

25. *Takes note* of paragraphs 403 to 405 of the report of the International Law Commission, and stresses the need to expedite the preparation of the summary records of the Commission;

26. *Takes note* of paragraphs 406 to 409 of the report of the International Law Commission, stresses the value of the *Yearbook of the International Law Commission*, and requests the Secretary-General to ensure its timely publication in all official languages;

27. *Also takes note* of paragraph 410 of the report of the International Law Commission, expresses its appreciation to Governments that have made voluntary contributions to the trust fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the fund;

28. *Welcomes* the continuous efforts of the Codification Division to maintain and improve the website relating to the work of the International Law Commission,[7]

29. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants representing the principal legal systems of the world, including in particular those from developing countries, will be given the opportunity to attend the Seminar, as well as delegates to the Sixth Committee, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;

30. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue considering ways to improve the structure and content of the Seminar;

31. *Underlines the importance* of the records and topical summary of the debate in the Sixth Committee for the deliberations of the International Law Commission and, in this regard, requests the Secretary-General to forward to the Commission, for its attention, the records of the debate on the report of the Commission at the sixty-sixth session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

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[6] See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly.

[7] www.un.org/law/ilc.

32. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;

33. *Requests* the Secretariat to make the complete report of the International Law Commission available as soon as possible after the conclusion of the session of the Commission for the consideration of Member States with due anticipation and no later than the prescribed time limit for reports in the General Assembly;

34. *Encourages* the International Law Commission to continue considering ways in which specific issues on which the views of Governments would be of particular interest to the Commission could be framed so as to help Governments to have a better appreciation of the issues on which responses are required;

35. *Recommends* that the debate on the report of the International Law Commission at the sixty-seventh session of the General Assembly commence on 29 October 2012.